IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL REVISION APPLICATION NO. 26 OF 2004.

Shiakh Ahmed Shaikh Kalu .... Petitioner.

V/s

Mohd. Saeed Ab. Majeed .... Respondent.

Mr. N. R. Bubria for the petitioner.

Mrs.A. M. Z. Ansari for respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

16-12-2004

PC:

Heard the learned advocates for the parties.

The petitioner challenges the decree passed by the trial Court and confirmed by the lower Appellate Court. It is the case of the petitioner that the impugned decree is not appealable in view of the provisions comprised under section 102 of the Code of Civil Procedure. It is his further case that the impugned order discloses jurisdictional error on the part of Courts below as the same is based on evidence contrary to the pleadings in the plaint. It was the case of the respondent that an amount of Rs.15000/- was paid on 17.9.95 against the document in writing drawn in that regard and out of the said amount of Rs.15000/-, the petitioner paid an amount of Rs.5000/- but did not repay balance amount of Rs.10000/-. It was the case of the petitioner that no such amount was borrowed by the petitioner on 17.9.95 and whatever amount was borrowed earlier was

already repaid by the petitioner and the document in question was obtained by misrepresenting that the signature of the petitioner was required on the said document for the purposes submission thereof before the income-tax authorities. Both the Courts below on analysis of evidence have found that the petitioner has failed to establish the fact that the document was obtained by misrepresenting that the same was required to be placed before the income-tax officer. The Courts below have arrived at the findings about failure on the part of petitioner to establish that the sum of Rs.10000/- was repaid while evidence on record disclosed that sum of Rs.5000/-out of Rs.15000/- was repaid by the petitioner. The said finding is of fact and unless it is shown to be contrary to the materials on record or is perverse, cannot be interfered with in exercise of revisional jurisdiction under section 115 of the Code of Civil Procedure. Once it is not in dispute that the petitioner had executed a document in question which apparently disclosed that sum of Rs.15000/- was borrowed by the petitioner and further it is admitted by respondent that sum of Rs.5000/- out of said amount of Rs.15000/- was repaid, it was necessary for the petitioner to establish that balance amount of Rs.10000/- was paid to the respondent. Undisputedly no evidence in that regard has been produced by the petitioner apart from claiming that no amount was due and payable by the petitioner on the ground that the petitioner had not borrowed sum of Rs.15000/- on 17.9.1995. Once the document in question ex-facie discloses borrowing of such amount by the petitioner and there is statement by the respondent to the effect that only sum of Rs.5000/- out of said amount was repaid, the petitioner not having been able to establish that the document in question was either fabricated or bogus no fault can be found with the concurrent findings arrived by the Courts below regarding failure on the part of the petitioner to establish repayment of Rs.10000/-. That being so there is no case for

interference in the impugned decree in revisional jurisdiction in exercise of powers under section 115 of the Code of Civil Procedure. Hence the petition fails and is rejected.